

**Excerpt from the
CITY PLANNING COMMISSION MINUTES
Minneapolis Community Planning & Economic Development (CPED)**

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MEMORANDUM

DATE: May 7, 2015

TO: Zoning and Planning Committee

FROM: Jason Wittenberg, Manager, Community Planning & Economic Development – Land Use, Design and Preservation

SUBJECT: Planning Commission decisions of April 13, 2015

The following actions were taken by the Planning Commission on April 13, 2015. As you know, the Planning Commission's decisions on items other than rezonings, text amendments, vacations, 40 Acre studies and comprehensive plan amendments are final subject to a ten calendar day appeal period before permits can be issued.

Committee Clerk

Lisa Kusz - 612.673.3710

Commissioners present

Matthew Brown, President | John Slack, Vice President | Alissa Luepke Pier, Secretary
Lisa Bender | Ben Gisselman | Theodore Tucker

Not present

Meg Forney | Rebecca Gagnon | Ryan Kronzer

7. 4609 28th Ave S, Ward 12

Staff report by Hilary Dvorak, BZZ-7091

The City Planning Commission adopted staff findings for the applications by Lora Grgich.

A. Expansion of a nonconforming use.

Action: **Denied** the expansion of a nonconforming use to allow a third-story addition to a four-plex in the R2B Two-family District.

Aye: Bender, Gisselman, Luepke-Pier, Slack and Tucker

Absent: Forney, Gagnon and Kronzer

B. Conditional use permit to increase the height of the building in the SH Shoreland Overlay District.

Action: **Denied** the conditional use permit to increase the height of the building in the SH Shoreland Overlay District from 2.5 stories or 35 feet to 3 stories or 35 feet.

Aye: Bender, Gisselman, Luepke-Pier, Slack and Tucker

Absent: Forney, Gagnon and Kronzer

C. Variance to increase the floor area ratio of the building.

Action: **Denied** the variance to increase the floor area ratio of the building from .5 to .87.

Aye: Bender, Gisselman, Luepke-Pier, Slack and Tucker

Absent: Forney, Gagnon and Kronzer

D. Variance to reduce the north interior side yard setback.

Action: **Denied** the variance to reduce the north interior side yard setback from 9 feet to 4.8 feet.

Aye: Bender, Gisselman, Luepke-Pier, Slack and Tucker

Absent: Forney, Gagnon and Kronzer

E. Variance to reduce the south interior side yard setback.

Action: **Denied** the variance to reduce the south interior side yard setback from 9 feet to 4.9 feet.

Aye: Bender, Gisselman, Luepke-Pier, Slack and Tucker

Absent: Forney, Gagnon and Kronzer

Staff Dvorak presented the staff report.

Commissioner Gisselman: The report indicates that the existing structure is two and a half stories or 35 feet and the conditional use permit is to expand that to three stories or 35 feet. I think maybe 35 feet for the existing structure is incorrect; is that right? I think on page three of your report it says 23 ½ feet.

Staff Dvorak: The allowed height in the shoreland is two and a half stories, 35 feet so I didn't start with where the existing house is. The existing height of the structure is 23'6". It's a flat roof so that'd be to the roof.

Commissioner Gisselman: Regarding the measurement of the proposed structure, you said that was to the top of the proposed railing on the rooftop deck. If the rooftop deck were not being proposed and then not the railing, would staff have a different perspective on the recommendation at that time regarding the conditional use permit? I suppose it would be four feet shorter without the railing and what's being proposed right now.

Staff Dvorak: Correct. I think staff would feel more comfortable with the overall height because that additional railing on the roof does add to the bulk and overall appearance. We cannot prevent someone from putting umbrellas and tables and chairs and other things up on the roof that one would expect with a rooftop deck. When the applicant first came in, the addition was larger and closer to the front of the building. We suggested they remove the rooftop deck and pull the addition back and they did push it back, however, the rooftop deck still remains. I'll show you a photo. To go back to the overall height, this is the existing structure so to the top of the roof it's the 23'6". The proposal to the top of the roof here would be 32'6", but to the top of the railing is the 35'.

Commissioner Gisselman: It seems to me then that if we didn't have the railing or the rooftop deck that would not address the concern you raised regarding the rezoning aspect.

Staff Dvorak: I think the overall cumulative impacts that would be created – changing the character of the area, being a taller structure, being a bulkier structure, all of those impacts remain. The overall height, because you wouldn't have the possibility of having other things up on the roof, would lessen the concern of the conditional use permit for height but it doesn't completely negate it just by eliminating the rooftop deck.

Commissioner Luepke-Pier: If we add a railing to the top, doesn't that exceed 35' then? A railing by code would have to be higher than 2'6".

Staff Dvorak: Looking at the elevation, there is a parapet.

Commissioner Luepke-Pier: Can you clarify what the shadowing is on the south side? It appears they are shadowing the house on the south.

Staff Dvorak: I'd like to have the applicant explain the shadow study in more detail because there shouldn't be any shadowing to the south, just to the north.

Commissioner Bender: Looking through the comments we've received, it looks like the direct southern neighbor wrote a letter of support and a couple other nearby neighbors have too. The neighborhood organization also submitted a letter of support.

Staff Dvorak: The applicant had a neighborhood meeting at her house so people could walk around the building and property. As a result of that, the neighborhood organization recommended support of the project and then there were some letters that came in over the weekend that were included in your packets today.

President Brown opened the public hearing.

Lora Grgich (4609 28th Ave S): I live in one of the upstairs units. Just to be clear, the building was built in 1929 as a four-plex. It got changed to R2B zoning around 1999. There is a tri-plex on the block as well as my property so we are the two nonconforming buildings on the block. We're also the two owner occupied buildings on the block. The staff report mentions that they believe the third story expansion is too tall. We've had a total of 10 of our neighbors showing support for the expansion as it's been shown. Specifically, the neighbors to the east of us sent a letter to you last week and they are in support. The main reason for the expansion is that the apartments are small. When they were built in 1929 I'm sure they were lovely, but they're small. The closet in the bedroom is 28" wide. The kitchens are small. Some of the rooms have one outlet. The conditional use permit, what's allowable is 35' or two and half stories, whichever is less. I am asking for 35' and it is a full three stories. I've attempted to mitigate that by pulling it back significantly from the front of the building. The south side sits back 15' from the face of the building, so from the 28th St side. The north side sits back 12'. The parapet is at 32'6". There was a question about the railing; there is a parapet so the roof sets down below that and it would require 42" railing up there for safety. It is at 35'. The railings are a real common railing that you see around a lot. It's pretty transparent. I don't think the elevations depict that accurately. With Hilary's comment about feeling that the scale is too large, I did drop the roof deck. It's 22' back from the front of the building. I did a site line study that shows you have to be 106' back from the building to see the railing up above. The staff report said that the addition is consistent with the Comprehensive Plan and that the issue is the height. I did a silhouette study. The way we perceive height of a structure isn't that we mentally measure down to grade. We see the silhouette against the sky. The single family house 4555 28th Ave S, the corner of 46th St, it's a really tall building. You can see the adjacent property next to it is a very short building. There's a larger disparity in height between those two structures than there would be between myself and my neighbors if the third story gets added on. The floor

Not Approved by the Commission

area ratio – if I wasn't in an R2B district and a four-plex, it would have to be R3, the FAR for that is 1.0. I'm requesting .87. I would comply with it if I was properly zoned. I understand that this body doesn't want to spot zone, but I'm just pointing out that with the density of a four unit building, it would be appropriate to have a higher FAR. Regarding setbacks, I have 4.9 feet on one side and 4.8 on the other. That's where the building was built in 1929. I don't feel like it's a significant difference to add the third story. We get very strong winds off the lake from the west. I'm not shadowing anyone's property. The typical tenants of urban planning have density on busy streets and on transit ways. On our block, 28th Ave have 5600 cars a day go by, it's a busy street. There is a bus stop that we all use that's 100 feet outside my front door. The LRT stop for the 46th St stop is nine minutes. The end of our block on the south end is the Minnehaha Creek bike trail, which is just an incredible bike trail that will take you all the way out west to Hopkins. It's a location where you want to have density and you want to have people that don't rely on cars. Right now there are five of us that live in the building. Two people don't own cars that live in the building. This is a location where I think it really makes sense. Mayor Hodges said she wants to grow the city by 100,000 people without adding cars, this is the way to do it. Thank you.

Commissioner Tucker: You're saying that the apartments are a little small, have you considered converting the four into three and solving the problem that way?

Lora Grgich: I've considered that, but honestly, I'd rather keep four units because that's four families that can live across the street from a lake and that's significant. I'd rather not kick someone out of that space.

Tommy Furlow Jr (4609 28th Ave): I've been in this building eight years. I think Lora bought it four years back. Since I've been there, she's an excellent landlord and does a good job of taking care of the property. She brings the community together as well. I'm in the apartment next door, which would be one of the affected units so if it did happen, I'd end up moving downstairs or another apartment within the building or maybe even outside of the building. I'm willing to do that just to help this neighborhood. The area we're at is a perfect area for a family to be in. With the lake and biking trails, it's a family friendly area. I like Lora and I think what's she's proposing is good and something the area needs. Lora is bringing a modern feel to the neighborhood. I think this should be permitted to happen and should stay a four unit building. Thank you.

Nick Blake (4615 28th Ave): I live in the house to the south. My wife and I have been there almost two years. We've grown very fond of Lora. We're big proponents for owner/occupied rental properties. I think you can see a big disparity between properties that are rented out by someone who is off site with things like basic upkeep, shoveling, mowing, picking up litter, etc. I hope this will keep Lora in there instead of pushed out so we get neighbors that don't care for the neighborhood as much as she does.

Michelle Appell (4609 28th Ave): I'm Lora's partner. I've lived in the building for just over a year now after living about nine years in downtown St Paul. Regarding not wanting to set a precedent or the building design not being in character with the neighborhood, as Nick and Tommy both mentioned, the two duplexes to the north of us are unoccupied. One has been unoccupied for approximately ten years. The one directly north of us has been unoccupied for almost a year now. There are at least four home values papers littering the front yard. There's a hole in the back of that house with a sock stuffed into it. On the 4500 block of 28th Ave, there is a house that has a hood of a car that's been propped up against a tree for about a year. This is an amazing area to live in. We're close to the trail, across from a lake, there are restaurants and bakeries we can walk to. What the neighborhood really needs is a revitalization of the homesteads on 28th Ave. I think this plan does exactly that. It's in character with the current design of the neighborhood and it brings an aesthetic that is desperately needed on those two blocks of 28th Ave.

President Brown closed the public hearing.

Commissioner Tucker: I will move the staff recommendation to deny (Gisselman seconded). My motion is to deny all applications because the project just doesn't hold up. I'm basing this first on the FAR which is already over the maximum for the R2B area, which could go much higher so that sets a precedent for higher FARs in an R2B zone. I think we want to be careful about doing that here and then not following up on that elsewhere. I am sympathetic to the idea, but I think this is an example of the gentle density getting a little more housing into the area but we aren't adding units, we're just making bigger units and I think the city needs more modest units so I'm not sure that this moves us in the direction we want to go in that way. I don't think this is the same as our reaction has been to other instances where we've legalized triplexes within the existing envelope. This is expanding the envelope in an area where that doesn't seem to be entirely appropriate.

Commissioner Bender: There was a lot of support for this application. The way the expansion is being implemented here really raises a bunch of different issues relating to our code. I don't have such a problem with the height, but the FAR and variances are quite significant. If the rezoning isn't supportable then it's hard for us to approve all of these variances. I don't know that a rezoning is totally unsupportable here, but that may be more of a policy question about the zoning in this neighborhood, but in the R2B I think the FAR in particular is almost doubled here.

Commissioner Luepke-Pier: My gut reaction is to support the motion as it stands. In terms of setting precedent, I do think this is a little different because it's an expansion of a nonconforming use on a block of R2B duplexes, they're already conforming with the zoning. The worry we had was every other person on the block doing the same thing and having three story buildings all over the block, the differentiation would be that they're complying with the zoning and this is already not in compliance and is an expansion of that nonconformity. I think in terms of setting a precedent that maybe this thin of ice as we think it is. There are hurdles in regard to the conditions that need to get met and the practical difficulties that I'm not sure I'm able to overcome. I am sympathetic to that this is a well-traveled street and maybe where more density should be pursued. I almost wish that side of the street was zoned something higher because I feel like that was an opportunity for gentle density to be added in an area that is perhaps lacking. I don't think it will set a precedent, but I'm not sure it is achievable with the difficulties it shows.

Aye: Bender, Gisselman, Luepke-Pier, Slack and Tucker

Absent: Forney, Gagnon and Kronzer